IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.544 OF 2005 IN W.P.NO.4831/1989

Shri. Iqbal B. Arb. ....Applicant.

Vs.

Shri. Abdul Gafar Hajumulla. ....Respondent.

Mr. M. Arshad Haindaday for the Applicant.

Mr. Sameer Tambakar i/by S.D. Patil for the Respondent.

CORAM : A.M. KHANWILKAR,J.
DATED : OCTOBER 28, 2005.

P.C.

1. Heard counsel for the parties. Perused the pleadings.

2. This application is filed for condonation of delay in filing the present application as well as for recalling and setting aside the order dated 25.7.2001 passed in Writ Petition No. 4831 of 1989 on the ground that the applicant was unaware that the matter has been disposed of by the aforesaid order till 3.4.2003 when the certified copy of the order was produced before the Bhiwandi court. Soon thereafter the present application is filed on 12.4.2003. The fact that the applicant had no knowledge about the passing of the order has not been countered by the respondent/original petitioner. The explanation offered in the application is that the

advocate on record was unaware that the matter was kept for hearing on 23.7.2003. On perusal of the record, it appears that the matter was initially listed on 5.7.2003 when none appeared for either party, for which reason, the matter came to be adjourned and conditional order was passed. Thereafter, the matter was renotified and reached for hearing on 24.7.2003. However, it remained over night part heard. The matter accordingly, proceeded on 25.7.2003. I am therefore, unable to accept the explanation offered in the application that the advocate on record had no notice about the hearing of the writ petition. The explanation offered is not sufficient cause. However, for the mistake of the advocate, the litigant should not suffer, for which reason, I am inclined to show indulgence to the applicant, but on condition that the applicant shall pay costs to the High Court Legal Service Committee quantified at Rs.5000/- and Rs.5000/- to the respondent/original petitioner as condition precedent for restoring the writ petition. This is so because as mentioned earlier, writ petition appeared on board on different dates. No serious attempt was made by the advocate on record for the applicant though the board disclosed his name on all these dates, which was so issued by the registry. Besides, the writ petition was decided on merits after hearing the counsel for the

original petitioner. As court's time has been wasted in the process, I am directing the applicant to pay the costs to the High Court Legal Service Committee as mentioned earlier and additional payment towards costs to the respondent original petitioner. Ordered accordingly. Costs shall be paid within two weeks from today, failing which, this order will stand vacated and the civil application be treated as dismissed for non prosecution.

(A.M.KHANWILKAR,J.)